IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12796 of 1994

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARENDRAKUMAR AMRUTLAL JOSHI

Versus

NARMADA & WATER RESOURCES DEPARTMENT,

Appearance:

1. Special Civil Application No. 12796 of 1994

MR MUKESH H RATHOD for Petitioner No. 1-4

Mr. H.M. Prachchhak, AGP for Respondent No. 1

RULE SERVED for Respondent No. 2-6

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 09/12/2004

ORAL JUDGEMENT

1. The grievance ventilated by the petitioners in

this petition under Article 226 of the Constitution of India is against the order dated 18th October 1994 passed by the Executive Engineer, Small Irrigation Scheme, Rajkot, whereby, the higher pay-scale granted to the petitioners pursuant to the Government Resolutions of 1991 is cancelled in view of the subsequent Government Resolution dated 16th August 1994, which, specifically, provides that the scheme of higher pay-scale is not applicable and available to those employees serving in the temporary establishment and, therefore, the petitioners are not entitled for the higher pay-scale. Consequently, the pay-scale in the grade of 1200-30-1560-EB-40-2040 granted to the petitioners came to be cancelled and the petitioners are placed in the original pay-scale of 950-20-1150-EB-25-1500. Accordingly, the pay-scale was fixed and the increments were also determined. It is, further, ordered that, in stead of recovering the amount of difference of the salary paid to the petitioners, the same is ordered to be transferred to the loan account of the Government.

2. While admitting the matter, the Court has granted interim relief staying implementation of the impugned order dated 18th October 1994 and, accordingly, as on date, the petitioners receive higher pay-scale in the grade of 1200-30-1560-EB-40-2040. So far as the recovery part is concerned, the same also remains stayed.

3. The higher pay-scale was granted to the petitioner No.1 with effect from 12th February 1988, the petitioner No.2 with effect from 13th March 1988, petitioner No.3 with effect from 1st June 1987, and petitioner No.4 with effect from 20th November 1988.

3.1 The main ground of challenge against the impugned order passed by the respondent-Authority is that the said order is passed without affording an opportunity of hearing, or, at least, no show cause notice was given to the petitioners as to why the higher pay-scale granted to the petitioners since 12th February 1988 be not withdrawn. The learned advocate for the petitioners have contended that the petitioner are eligible and entitled to get the benefits of higher pay-scale in view of completion of nine years of service as junior clerk in the work charged establishment. In support of his claim, the learned advocate for the petitioners has cited the following judgments:

(i) 2003(1) G.L.H. 697, in the case of M.M. Patel vs State of Gujarat.

(ii) 2003 III CLR 528, in the case of Ananta Yashwantrao Khanvilar vs. Accountant General and

others.

(iii) 2004 (1) G.L.H. 768, in the case of B.A. Brahmakshatriya vs. Director of Technical Education and others.

4. The respondents have filed affidavit-in-reply and have opposed the claim of the petitioners on the ground that, as per the schedule attached to the Resolution dated 16th August 1994, the benefits of higher pay-scale are not available to the employees working in the temporary establishment of the Government. Denial of right to be heard to the petitioners appears to have been justified in paragraph 8 of the affidavit-in-reply, stating that, while cancelling the higher pay-scale order, it is not necessary to extend a personal hearing, and there is no violation of natural justice.

5. I have heard the learned advocates for the parties. I have also gone through the record of the case. On a plain reading of the impugned order passed by the respondents dated 18th October 1994, it is clear that, before cancelling the higher pay-scale granted to the petitioners, neither the petitioners were heard, nor a notice to show cause was given to the petitioners by the respondents. Accordingly, the contention of the learned advocate for the petitioners is well founded to the effect that no opportunity of hearing, or, at least a show cause notice, was given to the petitioners before cancellation of the higher pay-scale given to the petitioners. Therefore, it is evident from the record itself that the respondent-Authority had not issued any show cause notice to the petitioners before passing the impugned order dated 18th October 1994 while cancelling the earlier order of grant of higher pay-scale. Therefore, the impugned order dated 18th October 1994 is passed in clear violation of principles of natural justice and, on this limited ground only, the impugned order dated 18th October 1994 is required to be quashed and set aside.

5.1. Therefore, looking to the over all facts and circumstances of the case, in my view, the impugned order dated 18th October 1994, which involves adverse civil consequences and creates monetary loss to the petitioners, was passed in clear violation of the principles of natural justice. Therefore, the impugned order is vitiated and non-est in the eye of law. I am in agreement with the case laws, as relied on by the learned advocate for the petitioners.

6. In the result, this petition is allowed. The

order dated 18th October 1994 passed by the Executive Engineer, Small Irrigation Scheme, Rajkot, is quashed and set aside. However, it is open to the respondents to pass appropriate orders afresh after issuing a show cause notice and after affording a reasonable opportunity of hearing to the petitioners to defend their cases. Till the decision is taken by the respondent-Authority, no recovery or any action be taken against the petitioners. Rule is made absolute accordingly, with no order as to costs.

(Anant S. Dave, J.)
(swamy)